

FLORIDA REAL ESTATE LAW QUESTIONS AND ANSWERS

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Here are some frequently asked questions and answers regarding Florida real estate law. This is provided for general information and not specific legal advice.

For additional information, see the free ebooks Florida Real Estate Sales Contracts and Florida Real Estate Lease Agreements, which are also available on www.jamesmartinpa.com.

1. How Much Title Insurance Should I Have on My Florida Real Estate?
 - A. Title insurance should be maintained equal to the fair market value of the real estate. Some people remember to increase homeowner's insurance coverage when they receive their annual premium statements, but title insurance premiums are paid only when the policy is issued at the time of purchasing the real estate. Title insurance can be obtained and increased by a licensed title insurance agent in Florida.
2. What Are Joint Tenancies?
 - A. Joint tenancies are any form of ownership involving more than one owner, such as joint tenancy with full rights of survivorship, tenancy in common, and tenants by the entirety. Joint tenancies may be held in many types of assets in Florida, including real estate, bank accounts, stocks, etc. Some forms of joint tenancy avoid probate and some do not.
3. Do Assets Held as Joint Tenants With Full Rights of Survivorship Avoid Probate in Florida?
 - A. Assets subject to Florida law that are held jointly with full rights of survivorship generally pass automatically by operation of law to the surviving joint owners and do not require probate if there is at least one surviving joint owner. Real estate, bank accounts, stocks, and mutual funds are frequently held as joint tenants with full rights of survivorship.
4. Do Assets Held as Tenants In Common Avoid Probate In Florida?
 - A. Joint assets held as tenants in common do not avoid probate under Florida law when one of the joint owners dies. Assets subject to Florida law that are held jointly but not with full rights of survivorship and not as tenants by the entirety may be considered held as tenants in common.
5. Do Assets Held as Tenants By the Entirety Avoid Probate In Florida?
 - A. Yes, assets held by a husband and wife as tenants by the entirety pass automatically by operation of law to the surviving spouse and do not require probate on the first death in Florida. In addition to probate avoidance, separate creditors of just one

spouse cannot reach tenancy by the entirety assets in Florida. This form of ownership is sometimes called tenancy by the entireties.

6. What Are Disadvantages To Joint Ownership?

A. One disadvantage of jointly-held property is that probate is not avoided when the last joint owner dies. Probate will usually be required upon the death of the last surviving joint owner. Another disadvantage of joint ownership of property in Florida is that it constitutes true ownership. This might mean that a joint owner could withdraw, sell, borrow against, or convey his or her interest in the joint asset without approval of the other joint owners. It also might mean that creditors of one joint owner could reach that joint owner's interest in the property (except for tenancies by the entirety).

7. Does Joint Ownership Avoid a Guardianship In Florida?

A. Joint ownership does not avoid a guardianship in Florida. For example, if a married couple owns a home and one of them becomes incapacitated, necessitating the sale of the home to pay medical bills, a guardianship might be required because one spouse alone cannot sign a deed conveying the home. A durable power of attorney might be used to convey the home, but not everyone has one.

8. What Are Disadvantages To Adding a Child's Name To a Home In Florida?

A. Adding a child's name as a joint owner of a home in Florida could adversely impact the homestead status of the home for tax and other purposes. It could also constitute a gift to the child possibly triggering the federal gift tax laws. And it could also be problematic because the child's creditors could reach the child's interest in the home. Similarly, the child's spouse could claim an interest in the home jointly held with a child if the child divorces. Therefore, it is generally not advisable to add a child's name as joint owner of a home in Florida.

2025.07.27